

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 03-10,929
:
vs. : CRIMINAL
:
NAFIS FAISON, : Motion to Reconsider
Defendant :

ORDER

AND NOW, this ___ day of August 2004, the Court DENIES the Commonwealth's Motion to Reconsider. The basis of the Commonwealth's motion was that Robert Hall's Rule 600 run date was earlier than the defendant's. The Commonwealth contended that Mr. Hall's Rule 600 run date was on or about May 5, 2004, not June 22, 2004. The Commonwealth and the defense stipulated that the Court would take judicial notice of Mr. Hall's case file. After a review of Mr. Hall's file, it appears that Mr. Hall's adjusted Rule 600 run date would be August 8, 2004, not May 5 as alleged by the Commonwealth. In addition to the bench warrant discussed in the Commonwealth's motion, there were defense continuances, which would result in the exclusion of an additional 95 days from November 4, 1999 to February 7, 2000.¹

Moreover, as the Court noted in its initial decision, the Commonwealth did not notify Ms. Dgien at the pre-trial conferences for the April/May trial term that the defendant's Rule 600 date would expire before the next criminal trial term in June. Ms.

¹At the conclusion of the hearing and argument on the Commonwealth's Motion to Reconsider, the prosecutor tried to argue that, even if Mr. Hall's Rule 600 date was later than the defendant's, the Commonwealth had the discretion to take Mr. Hall's case to trial before the defendant's. The prosecutor cited Commonwealth v. Briggman, 325 Pa.Super. 333, 472 A.2d 1145 (1984) for this proposition. This issue, however, was not raised in the Motion to Reconsider. Even if it had been raised, the Commonwealth did not present any evidence to support this argument.

Dgien testified that the District Attorney's Office has provided such input in other cases, but did not do so in this case. Thus, the Court concluded the District Attorney's office simply lost track of this case for Rule 600 purposes. The Pennsylvania appellate courts have held that due diligence imposes a duty on district attorneys' offices to maintain a record keeping system to track cases. See Commonwealth v. Browne, 526 Pa. 83, 584 A.2d 902 (Pa. 1990); Commonwealth v. Payton, 449 Pa.Super. 168, 673 A.2d 361 (Pa.Super. 1996). Based on Browne and Payton, the Court cannot find that the Commonwealth acted with due diligence in this case.²

In conclusion, in Lycoming County, once a case reaches the trial court level, it is automatically placed on a trial list and it is re-listed on each successive trial list until a disposition is reached through a plea or a trial. The District Attorney's office's function is not simply to list the case for trial, but to notify the Court Scheduler when a case has an imminent Rule 600 deadline so those issues can be prioritized and scheduled by the Court. Under Rule 600(G), in order for the Court to deny a motion to dismiss, the Court must find that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth. Although the Commonwealth has had the opportunity to present evidence at two separate hearings, the Commonwealth has not presented evidence to explain why this case was not prioritized for trial in the April/May 2004 trial term when the 365-day deadline for this case expired on May 30, 2004.

² At the original hearing on the defendant's motion, the Commonwealth argued that it was duly diligent because it was ready for trial and the case simply wasn't reached due to judicial delay resulting from a backlog of cases. In Commonwealth v. Hawk, 528 Pa. 329, 597 A.2d 1141 (1991), the Commonwealth argued that it was duly diligent, because it remained ready to proceed to trial throughout the scheduling of the case. The Pennsylvania Supreme Court, however, found that even when the District Attorney's office had no actual control over when the case was listed for trial due to an individual judge calendar system, it must take affirmative action to ensure the case is scheduled before the Rule 1100 (now Rule 600) expiration date.

Accordingly, the Court is constrained to grant dismissal pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure.

By The Court,

Kenneth D. Brown, P.J.

cc: Jason Poplaski, Esquire (APD)
District Attorney's Office
Work file
Gary Weber, Esquire (Lycoming Reporter)